SUPREME COURT OF INDIA

Pr.Commissioner of Income Tax-3

Vs.

Ballarpur Industries Ltd.

C.A.No.4026 of 2019

(Abhay Manohar Sapre and Dinesh Maheshwari,JJ.,)

22.04.2019

JUDGMENT

Abhay Manohar Sapre,J.,

SLP(C) No.1153 of 2018

1. Leave granted.

2. This appeal is filed against the final judgment and order dated 17.07.2017 passed by the High Court of Judicature at Bombay, Bench at Nagpur in ITA No.38 of 2003 whereby the High Court dismissed the appeal filed by the appellant herein and upheld the order dated 30.06.2003 passed by the Income Tax Appellate Tribunal (for short, "the Tribunal").

3. A few facts need mention hereinbelow for the disposal of this appeal, which involves a short point.

4. The appellant is the Commissioner of Income Tax and the respondent is an assessee.

5. The respondent-assessee is a Limited Company, which is engaged in the business of manufacturing of various kinds of papers. The dispute in this appeal relates to the assessment year 1993-94.

6. The question arose in the assessment year in question before the Assessing Officer (AO) as to what is the true nature of payment of Rs.3.25 crores made by the respondent-Company(assessee) to one Mr. G.R.Hada pursuant to the compromise arrived at between the respondent-assessee-Company and Mr. G.R.Hada in a civil suit filed by Mr. G.R. Hada against the respondent-Company and others.

7. According to the respondent-Company(assessee), Mr. G.R. Hada and the respondent-Company were the joint promoters of one Company called M/s Andhra Pradesh Rayons Limited in which Mr. G.R. Hada was holding 10.25% shares and the remaining shares were held by other promoter shareholders with different percentage.

8. Since the dispute arose amongst the promoter shareholders, Mr. G.R. Hada filed a civil suit against the respondent-Company(assessee) and other promoter shareholders on the basis of an agreement, which was entered into amongst the promoter shareholders.

9. In the abovementioned suit, a compromise was arrived at between the respondent-Company(assessee) and Mr. G.R. Hada. Pursuant to the said compromise, the respondent-Company(assessee) paid a sum of Rs.3.25 crores to Mr. G.R. Hada.

10. The respondent-Company(assessee), however, claimed a deduction of Rs.3.25 crores in the assessment year in question as revenue expenditure because, according to them, they had paid the said sum to Mr. G.R. Hada for running their business.

11. The AO examined the claim in the context of the terms of the agreement in Para 12 (a) of his order dated 29.03.1996 (pages 54 to 60 of the SLP paper book) and held that the claim cannot be considered as "revenue expenditure". The AO, therefore, rejected the claim.

12. The respondent-Company(assessee) felt aggrieved by the order of the AO and filed an appeal to the Commissioner of Income Tax (Appeals)-I, Nagpur. The CIT (Appeals) dealt with this issue in Para 15 of his order (pages 92 to 94 of the SLP paper book) and by his order 18.12.1998 confirmed the addition made by the AO. In other words, the CIT (Appeals) was also of the view that the claim made by the respondent- Company(assessee) cannot be considered as "revenue expenditure".

13. The respondent-Company(assessee) felt aggrieved and filed second appeal in the Income Tax Appellate Tribunal. The Tribunal examined the question in Paras 26 and 27 and by its order dated 30.06.2003 allowed the appeal and directed the AO to allow the deduction of Rs.3.25 crores as claimed by the respondent-Company(assessee).

14. The Commissioner of Income Tax- Revenue felt aggrieved and filed appeal in the High Court of Judicature at Mumbai, Nagpur Bench. By impugned order, the High Court dismissed the appeal, which has given rise to filing of the present appeal by way of special leave by the Revenue in this Court.

15. So, the short question, which arises for consideration in this appeal, is whether the High Court was justified in dismissing the appeal filed by the Commissioner of Income Tax.

16. Heard Mr. Sanjay Jain, learned Additional Solicitor General for the appellant-Revenue and Ms. Vanita Bhargava, learned counsel for the respondent- Company(assessee).

17. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal, set aside the impugned order as well as the order of the Tribunal and remand the case to the Tribunal to decide the appeal filed by the respondent-Company(assessee) afresh on merits in accordance with law.

18. The need to remand the case to the Tribunal has arisen for the following reasons.

. From the perusal of Para 26 of the order of the Tribunal, we find that the Tribunal has recorded a finding, which reads as under:

> "26 The AO did not dispute the fact that the expenditure related to the business of the assessee. The CIT (A), however, reversed the findings of the AO and held that the expenditure cannot be considered as business expenditure. A perusal of the CIT (A)'s order can only lead to a conclusion that the CIT(A) was of the view that the expenditure in question was not a capital expenditure but of a revenue nature "

20. The aforesaid observation of the Tribunal, on what AO and CIT (Appeals) held, does not seem to be correct and rather inconsistent when we peruse the finding of the AO (concluding Para 12 (a) & (d) of the AO's order at page 60 of SLP and concluding Para 15.1 of CIT (Appeals) at page 93 of the SLP).

21. In other words, we find that the Tribunal did not correctly appreciate as to what AO and CIT (Appeals) held and what was their reasoning which led to their respective conclusion.

22. Having wrongly observed about their respective reasoning and the finding, the Tribunal proceeded to examine the case and eventually reversed the order of CIT (Appeals). The High court did not notice the aforesaid observation of the Tribunal and upheld the order of the Tribunal.

23. In such a situation like the one arising in the case and keeping in view the question involved, we are of the considered opinion that the matter deserves to be remanded to the Tribunal for deciding the appeal filed by the respondent-Company (assessee) afresh on merits because the Tribunal being the last Court of appeal on facts, its finding on the question of fact is of significance.

24. In our view, remanding the case is not likely to cause any prejudice to any party because the aggrieved party will have a right of appeal to the High Court and then to this Court against any adverse order.

25. Though the learned counsel for the parties argued the question on merits but having taken note of the approach of the Tribunal, we consider, in the interest of both the parties, to remand the appeal to the Tribunal for its hearing afresh on merits in accordance with law, keeping all the issues open.

26. It is for this reason, we allow the appeal, set aside the orders of the High Court and the Tribunal and remand the appeal to the Tribunal for its decision afresh on merits in accordance with law uninfluenced by any observations made in the impugned order, order of the Tribunal and in this order. Needless to observe, the parties will be entitled to raise all contentions in appeal before the Tribunal.

27. We make it clear that we have not expressed any opinion on the merits of the case having formed an opinion to remand the case to the Tribunal in the light of what we have observed supra.